

**RESOLUTION 2012- \_\_\_\_\_**

**A RESOLUTION OF INTENT TO PROMULGATE AN ORDINANCE ADOPTING POGREBA  
FIELD AIRPORT AFFECTED AREA REGULATIONS AND DESIGNATING AN AIRPORT  
AFFECTED AREA FOR THE POGREBA FIELD AIRPORT IN THREE FORKS, MONTANA  
AND SETTING DATES FOR FURTHER HEARINGS INCLUDING A FIRST AND SECOND  
READING OF THE ORDINANCE**

This Resolution was introduced by \_\_\_\_\_; moved by  
Commissioner \_\_\_\_\_ and seconded by Commissioner \_\_\_\_\_.  
The Resolution was adopted \_\_\_\_\_.

WHEREAS, Gallatin County, Montana owns and controls the Pogreba Field Airport in and near Three Forks, Montana (Pogreba Field);

WHEREAS, §67-7-201, MCA allows Gallatin County to designate an airport affected area, concurrently adopt regulations and administer and to enforce the regulations as adopted for an NPIAS airport like Pogreba Field;

WHEREAS, on November 30, 2005 the Board of Gallatin County Commissioners created the Pogreba Field Joint Airport Affected Area Board (Board) in its Resolution 2005-162 to advise it before final consideration of the designation of an airport affected area and creation of regulations for the same affecting Pogreba Field;

WHEREAS, the Board, on April 13, 2010 "accepted" the regulations set forth in Exhibit A attached hereto;

WHEREAS, those proposed regulations set forth and define the area shown in Exhibit B attached hereto as an airport affected area for Pogreba Field;

WHEREAS, on June 4, 2010 the Board resolved to recommend adoption of the regulations and designation of the airport affected area in a form substantially similar to that set forth in Exhibits A and B to Gallatin County; and

WHEREAS, the Board of Gallatin County Commissioners have additionally received a request from the Gallatin County Airport Board to adopt regulations and designate an airport affected area.

**NOW THEREFORE BE IT RESOLVED:**

1) It is the intent of the Board of Gallatin County Commissioners to consider the regulations recommended in Exhibit A through the promulgation of an ordinance pursuant to Montana law.

2) It is the intent of the Board of Gallatin County Commissioners Gallatin County to consider the designation of an airport affected area for that property set forth in Exhibit B by the same ordinance.

3) A first reading of an ordinance to consider such adoption and designation shall take place on May 8, 2012 with notice published pursuant to 7-1-2121, MCA on at least April 29, 2012 and May 6, 2012.

4) A second reading of the ordinance to consider such adoption and designation shall take place on May 22, 2012 with notice published pursuant to 7-1-2121, MCA on at least May 13, 2012 and May 20, 2012.

5) The County Attorney's Office is requested to further review the regulations and draft an ordinance for the adoption thereof.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2012.

GALLATIN COUNTY COMMISSION

\_\_\_\_\_  
R. Stephen White, Chairman

ATTEST:

\_\_\_\_\_  
Charlotte Mills, Clerk & Recorder

# POGREBA FIELD AIRPORT AFFECTED AREA REGULATION

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## **Section 1. General Provisions.**

### **1.1 Authority.**

This regulation is authorized by the Airport Compatibility Act, Title 67, Chapter 7, Montana Code Annotated 2009, and applicable standards established by 14 Code of Federal Rules and Regulations part 77. The regulation together with the airport affected map and land use classifications for determining change of use shall be known as the Pogreba Field Airport Affected Area Regulation [PFAAAR] and referred to throughout as "regulation."

### **1.2 Legislative History and Findings.**

Pogreba Field Three Forks Airport is located within the jurisdictional boundaries and subject to the local government authorities of the City of Three Forks, MT and Gallatin County, MT. On August 17, 2004, the Pogreba Field Joint Airport Zoning Board [PFJAZB] was established by County Resolution No. 2004-11. On November 30, 2005, the PFJAZB was dissolved, and the Pogreba Field Joint Airport Affected Area Regulation Board [PFJAAARB] was formed by County Resolution No. 2005-162 and by Resolution No. 064 05-06 of the City of Three Forks on January 10, 2006. The dissolution of the PFJAZB and establishment of the PFJAAARB was required by changes in the MCA. On June 26, 2007, the City Council of the City of Three Forks adopted Ordinance No. 0300- 2007-2008 thereby making Model Pogreba Field / Three Forks Airport Affected Area Regulations a City Ordinance. On July 8, 2008, by Resolution No. 2008, and on October 25, 2009, by Resolution No. 2009, the PFJAAARB adopted and recommended previous versions of this regulation. This regulation is intended to repeal and supersede such prior versions of this regulation.

### **1.3 Character of Airport Affected Area.**

As required by MCA 67-7-203, the regulation and airport affected area map have resulted from consideration of the safety of airport users and persons and property in the vicinity of the airport; flying operations conducted or expected to be conducted at the airport; nature of the terrain; future development of the airport; federal aviation administration recommendations for the aeronautical surfaces necessary for safe flying operations. The regulation and airport affected area map, surfaces and zones are based on established airport, aeronautical and aviation engineering principals, accepted industry standards, public comment, recommendations from the City of Three Forks Planning Board and professional planner, review and approval from the PFJAAARB, and in general the FAA standards published at 14 CFR 77.

#### **1.3.1 Flying Operations.**

General aviation, flight school, historic annual fly-in events, helicopters, emergency transportation, and other visual flying operations **characterize** the flying operations. Most operations are single prop horizontal wing aircraft with infrequent jet aircraft. Flying operations are expected to be consistent with past performance.

#### **1.3.2 Airport Plan.**

The future development of the airport is dependent on many factors including the availability of FAA funding or grants, economic development, community support, aviation tourism, and the successful management of airport operations. An Airport Layout Plan has been considered and most recently received conditional approval by the FAA on 01.17.2010. Plans for improving

navigation and promoting public safety include a non-precision instrument landing system to direct air traffic to runway 2 and away from the City of Three Forks.

### **1.3.3 Terrain Considered.**

Considerations of terrain and existing uses is shown by the exemptions for fences, agricultural use and activities, structures not exceeding 36' in height in the horizontal and conical zones, and unoccupied structures not exceeding 15' in height in the transitional zone where a 25' setback from the primary surface is maintained.

### **1.4 Purpose and Intent.**

The general purpose and intent is to promote public health, safety and general welfare of airport users and persons and property in the airport area. Permit review, required by statute, is for the purpose of identifying, mitigating and preventing creation of potential obstructions or hazards, and identifying, mitigating and preventing enlargement or expansion of existing obstructions or hazards that might increase the risk of harm, injury or death to persons in the air and on the ground and to prevent structural damages, fire and other harmful occurrences in the airport affected area.

### **1.5 Legal Description and Map.**

The official airport affected area map shall be available in the Office of the Gallatin County Clerk & Recorder and City of Three Forks and shall bear certificate with the signature of the Chairman of the Commission and Three Forks City Council attested by the Clerk and Recorder, and the date of adoption of the official Zoning Map. If any changes to the official Airport Affected Area Map are made by amendment of this regulation such changes shall be made to the official Airport Affected Area Map and signed, dated and certified upon the map or upon documentation attached thereto.

### **1.6 Interpretations.**

Subject to the appeals procedure herein, the Airport Agent can make official interpretations of the Pogreba Field Airport Affected Area Regulation and Map. Where uncertainty exists as to the boundaries of districts as shown on the official Airport Map the boundaries shall be interpreted as following the nearest logical line to that shown. Boundaries indicated as approximately following the centerline of roads or highways shall be construed to follow such centerlines. Boundaries indicated as approximately following platted Lot lines shall be construed as following such Lot lines. Boundaries indicated as following the centerline of streams, rivers, canals, or ditches shall be construed to follow such centerlines. Boundaries indicated as parallel to or extension of feature indicated on the official Airport Map shall be determined by the scale of the map.

## **Section 2. Definitions.**

The definitions in Montana Code Annotated § 67-1-101, and 67-7-101 et seq., and 14 CFR Part 77 are adopted and incorporated by reference. Definitions in this regulation shall be controlling in the event of any conflicts.

**Aeronautical Areas.** Runways, hangars, aprons, taxi-lanes, parking areas, roads, terminal, tarmac and other areas of the airport property shown on any official airport layout plan or maps for existing and future aviation needs.

**Agricultural Activity.** Cultivation of the soil, farming, ranching, raising livestock or dry grain crops and **all incidental uses including irrigation, harvesting, crop rotation and other activities.**

**Airport.** The Pogreba Field / Three Forks Airport owned by Gallatin County and located in Three Forks, Montana.

**Airport Affected Area.** Except areas outside Gallatin County, the airport affected area is the air space above and all the land within the primary, approach, transitional, horizontal and conical zones and surfaces as defined herein and shown on the official airport affected area map prepared by Morrison-Maierle PE attached and incorporated herein.

**Airport Affected Area Map.** The official airport affected area map prepared by Morrison-Maierle that shows the jurisdiction and application of this regulation and **defines the zones and surfaces.** If any land, use, structure, action or activity subject to this regulation is located partially within and partially outside the airport affected area, then only the portion located within the airport affected area shall be subject to this regulation.

**Airport Affected Area Permit.** As required by MCA 67-7-212, the permit required pursuant to these regulations referred to as Airport Affected Area Permit (AAP), permit or conditional permit.

**Airport Agent.** Any person or persons designated or appointed with the authority to investigate complaints, interpret the regulation, issue permits, orders or decisions and generally administer the regulation. The City Council of Three Forks may appoint an Airport Agent with authority in the boundaries of the City of Three Forks. The County Commissioners shall appoint an Airport Agent with authority outside the City of Three Forks. The City Council may by Inter-Local agreement authorize the County Airport Agent with administrative authority within the boundaries of the City of Three Forks.

**Airport Elevation.** The highest point of elevation on the airport's runways based on the North American Vertical Datum of 1988 (NAVD 88) that is 4089 feet above mean sea level (MSL).

**Airport Layout Plan (ALP).** The Pogreba Field Airport Gallatin County Three Forks, Montana Airport Layout Plan, A.I.P. 3-30-0077-004-2005, MMI Project: 1985.006/010/0310, consisting of 6 drawings prepared by Morrison-Maierle Inc. showing existing conditions and future proposed development, most recently stamped 1/17/08 with conditional approval by the FAA, by the Gallatin County Commission on 12/17/07.

**Airport Owner.** Gallatin County also the governing body.

**Airport Appeals Board.** The Gallatin County Airport Board appointed by the governing body that shall: hear and decide appeals from the determinations, decisions or orders of the Airport Agent; hear and decide variance requests; and hear and decide any and all special exceptions. The process and procedures before the Airport Appeals Board shall be consistent with this regulation and as required by MCA 67-7-302; MCA 76-2-223 and MCA 76-2-225 through MCA 76-2-228.

**Area.** Any land within any of the airport affected area boundaries shown on the airport affected area map.

**Change of Use.** Any change of the use of land, including development of structures, activities or actions, such that taken as a whole the use of land would reasonably be viewed as changing the use as described on the change of use chart Section 6 herein.

**Electromagnetic Effect.** Any interference or impediment to the transmission or quality of navigation or communication signals to or from aircraft, meteorological equipment, navigation equipment, communications equipment, or air traffic control facilities caused by a power source, radio frequency transmitter, or an object or surface that emits, reflects or re-radiates an electromagnetic signal or electrical pulse.

**Exemptions.** In all surfaces and zones the installation, erection, repair, replacement or construction of fences and fence lines not exceeding ten feet in height and agricultural activities are exempt. In the conical and horizontal zones -- structures not exceeding 36' in height shall be allowed without a permit. In the transitional surface and zone -- uninhabited structures not exceeding 15' in height above ground, including sheds, storage buildings, garages and other uninhabited structures setback a minimum 25' from the primary surface shall be allowed without a permit.

**Governing Body.** The Gallatin County Board of County Commissioners having charge of the finances and management of the airport is designated as the governing body as per MCA 67-1-101(21) and MCA 67-7-103.

**Hazard / Obstruction.** Within the airport affected area any structure or use that obstructs the air space required for the flight of aircraft in landing or taking off at the airport or is otherwise hazardous to flight, landing or taking off, navigation, air traffic or airport operations. Obstructions or hazards are used interchangeably and include without limitation, lights, radio or electromagnetic emissions and/ or any other thing, use, actions or activity within the airport affected area that creates or causes unreasonable risks to public safety on the ground or in the air.

**Height.** The vertical difference measured in feet and inches between the highest point of a structure and the ground where the structure is located.

**Height Relative to Airport Elevation.** The vertical difference in feet and inches between the highest point of a structure measured above mean sea level and the airport elevation.

**Joint Airport Board.** The Pogreba Field Joint Airport Affected Area Regulation Board [PFJAAARB] created by Resolution No. 2005-162 of the Board of County Commissioners of Gallatin County on November 30, 2005, and by Resolution No. 064 05-06 of the City of Three Forks on January 10, 2006.

**Non-Aeronautical Areas.** Airport property, outside of the aeronautical areas that might be suitable for uses as office space for governmental entities.

**Nonconforming Structures / Uses.** Any structure or use that legally exists at the time these regulations become effective that does not conform to this regulation may continue, however no increase, expansion or intensification of the nonconforming use or structure shall be allowed without compliance with these regulations. A nonconforming structure that is substantially damaged may be reconstructed or replaced without obtaining a variance or permit provided that the degree of nonconformity or hazard is not increased.



**Obstruction.** See hazard / obstruction herein.

**Permit.** See airport affected area permit herein.

**Person.** Any individual person, partnership, corporation, association, limited liability company, professional liability company, government board, agency or department, or other legal entity private or public.

**Regulation.** The Pogreba Field Airport Area Affected Regulation including all provisions herein, and any definitions, maps or drawings that are expressly incorporated by reference and all of which shall be referred to as this regulation.

**Runway.** The prepared surface of an airport, suitable for landing or taking off by aircraft, as well as planned extensions documented on the airport layout plan.

**Special Exceptions.** Any conditional permit or approval granted by the Airport Appeals Board after a public hearing pursuant to this regulation.

**Substantial Damage.** Damage of EIGHTY (80%) PERCENT or more of any structure from any cause, including natural deterioration or decay, fire, storm or natural causes.

**Structure.** Any object constructed, erected, maintained, or installed by any person, including but not limited to any buildings, towers, poles, bridges, cell towers, radio antennae, cranes, smoke stacks, earth formations, overhead transmission lines, and any other things manmade.

**Structural Penetration.** Unless an exemption applies -- whenever any proposed structure or use, change of use, or replacement, rebuild, or substantial alteration, actions or activity (except trees) penetrates any surface or surfaces then permit review for obstructions and hazards shall be required.

**Surfaces.** The airport imaginary surfaces for existing and planned development of the airport shown on the airport affected area map that include approach, conical, horizontal, primary and transitional surfaces.

**Terrain Penetration.** Any natural land surface that penetrates into any of the surfaces.

**Threshold.** The beginning portion of a runway that is available for landing.

**Tree.** Any naturally growing vegetation deciduous, coniferous or otherwise.

**Variance.** A variance is required before commencement, construction, erection, installation, enlargement or expansion of any use or structure not in strict conformity with this regulation.

**Vicinity Sketch.** A non-reduced 8 1/2" x 11" copy of a portion of a 7.5 minute USGS Quadrangle Map that shows the location of a proposed structure or land use and identifies the ground elevation at the proposed location. The Vicinity Sketch must include the name of the USGS Map copied, the Township and Range of the area shown, and the horizontal and vertical datums upon which the map is based (typically found in the lower right-hand corner of the map).

## **Section 3. Surfaces and Zones.**

### **3.1 Surfaces and Zones.**

A zone is the ground beneath an imaginary surface of the same name. Zones and surfaces as shown on the airport affected map establish standards for determining obstructions or hazards to air navigation.

### **3.2 Approach Zone and Approach Surface.**

The approach zone exists at each end of the runway, beginning at 200 feet from the end of each runway, centered on the extended runway centerline, with an initial width of 500 feet, widening thereafter uniformly to a width of 3,500 feet at a distance of 10,000 feet beyond the end of the primary surface. The approach surface slopes 34 feet outward for each foot upward for a horizontal distance of 10,000 feet.

### **3.3 Airport Property Area.**

The land owned by Gallatin County and designated for airport use.

### **3.4 Conical Zone and Conical Surface.**

The conical zone commences at the periphery of the horizontal zone and lies below the conical surface. A conical surface slopes 20 feet outward for each foot upward beginning at the periphery of the horizontal zone, for a horizontal distance of 4,000 feet. The conical surface begins at 150 feet above the airport elevation.

### **3.5 Horizontal Zone and Horizontal Surface.**

The horizontal zone lies beneath the horizontal surface, which is a plane 150 feet above the established airport elevation, the perimeter of which coincides with the perimeter of the horizontal zone shown on airport affected area map. The horizontal zone does not include the approach and transitional zones.

### **3.6 Primary Zone and Primary Surface.**

The primary zone is 500 feet wide, centered on the runway, extending 200 feet from each end of the paved runway. The primary surface is immediately above the primary zone.

### **3.7 Transitional Zone and Transitional Surface.**

The transitional zone is immediately below the transitional surface. The transitional surface is perpendicular to the runway centerline and its extension. It begins at the outer periphery of the approach surface and the primary surface and extends upward at a slope of 7 feet horizontally for each foot vertically from the sides of these two surfaces until it intersects the horizontal and conical surfaces.

## **Section 4. Administration.**

### **4.1 Airport Affected Area Permit.**

As required by MCA 67-7-212, the permit required pursuant to these regulations shall be referred to as Airport Affected Area Permit (AAAP) or permit.

#### **4.1.1 Permit Required.**

Within the airport affected area an Airport Affected Area Permit must be obtained from the

Airport Agent before any person: (1) constructs, erects or installs any structure, including rebuilding, altering, expanding, or enlarging an existing structure, such that the structure exceeds SEVENTY-FIVE (75') FEET in height above natural grade or penetrates the height of the imaginary surface where the structure is located; or (2) involves a change in the use of land as defined in this regulation.

#### **4.1.2 No Permit Required Other Agency Review.**

Any "action or activity", including construction, alteration, enlargement, expansion, intensification or erection of any new or proposed structure whether nonconforming or otherwise, use or change of use, shall be allowed without a permit under this regulation if the action or activity is subject to and approved by the appropriate administrative agency or department pursuant to any of the following: Gallatin County Subdivision Regulations; Montana Open Pits Mining Act; Gallatin County Gravel Pits Regulations; Three Forks Zoning Regulations; Federal Aviation Administration; or any other local, state or federal administrative regulation that requires an environmental assessment or environmental impact statement as part of the review or permit process.

#### **4.1.3 Permit Fee.**

**Fees, if any, may be established by the City Council of the City of Three Forks or Gallatin County Commissioners and paid to the either the City of Three Forks or Gallatin County depending on which administration conducts the permit review.**

Airport Agents shall establish forms for processing permits, variances, complaints, and appeals that must include: owner and adjacent owners; vicinity sketch, site plan or survey, existing and proposed uses and structures or changes, alterations, repairs, replacements as applicable; sources of lighting, radio, or electromagnetic emissions or other information reasonably necessary for the Airport Agent to review the application and determine if hazards or obstructions will be created. Permit applications must be executed by the owner or legal representative before a notary with representations as to the accuracy and truthfulness of the information. No permit fee shall be required for trees.

#### **4.1.4 Permit Criteria.**

As required by MCA 67-7-212, a permit may not be granted that would allow the establishment of an airport hazard or that would allow a nonconforming use or structure to become a greater hazard to air navigation than it was on the effective date of this regulation. Permits shall be granted unless the Airport Agent finds that the structure or use, change of use, or replacement, rebuild, or substantial alteration, actions or activity would create a hazard or obstruction.

#### **4.1.5 Special Terrain Conditions.**

In the conical and horizontal zones, penetration of an imaginary surface due to existing ground elevation shall not prohibit the proposed structure, use, change of use or replacement, rebuild, or substantial alteration, actions or activity if: (1) no hazard or obstruction is established, enlarged or intensified; or (2) the conditions required by a special exception would reasonably mitigate against potential hazards or obstructions. (3) In the conical and horizontal surfaces and zones structures not exceeding 36' in height shall be allowed without a permit and shall not constitute a hazard or obstruction in the conical and horizontal zones.

#### **4.1.6 Special Transitional Zone Conditions.**

In the transitional zone, penetration of the imaginary surface due to the height of the proposed

structure shall not prohibit the proposed structure, use, change of use or replacement, rebuild, or substantial alteration, actions or activity if: (1) no hazard or obstruction is established, enlarged or intensified; or (2) conditions required by a special exception would reasonably mitigate against potential hazards or obstructions. (3) In the transitional surface and zone structures not exceeding 15' height above ground, including sheds, storage buildings, garages and other uninhabited structures or buildings, shall be allowed without a permit provided that setback of 25' from the primary surface is maintained.

#### **4.2 Special Exceptions Approval.**

**Any person may apply to the Airport Appeals Board for special exceptions approval without first applying for a permit from the Airport Agent.** In addition, whenever the Airport Agent determines that a permit might issue subject to conditions to reasonably mitigate potential hazards or obstructions, then the Airport Agent may recommend that the applicant seek special exceptions approval from the Airport Appeals Board. Special exceptions may be granted by the Airport Appeals Board only upon public hearing and notice and consideration of permit criteria, special exceptions criteria, and provisions of this regulation.

##### **4.2.1 Special Exceptions Criteria.**

A special exception granted pursuant to this regulation may: (1) require the owner of a structure to allow the governing body, at the owner's expense, to install, operate and maintain markers or lights to warn pilots of the presence of a hazard or obstruction; (2) limit or condition any sources of light, radio or electromagnetic emissions; (3) limit or condition hours of operations, activities, actions or uses that might unreasonably interfere with flight, navigation, air traffic or airport operations or cause a hazard or obstruction; or (4) require such other conditions, restrictions or covenants reasonable necessary to promote public health and safety on the ground and / or in the air in the airport affected area.

#### **4.3 Variances.**

As required by MCA 67-7-303 a variance procedure is provided consistent with the statute as follows.

##### **4.3.1 Variance Required.**

Any person intending to erect or increase the height of a structure or use property in a manner that is not in accordance with the strict requirements of this regulation must obtain a variance from the Airport Appeals Board. In addition to the information required for a permit application, the variance application must include an explanation of the substantial practical difficulty or unnecessary hardship and any public interests that might be impacted. A variance application must include notice to the Federal Aviation Administrator on FAA Form 7460-1 (or such other updated forms) if required by FAA rules or regulations.

##### **4.3.2 Variance Criteria.**

As required by MCA 67-7-303, a variance must be granted if: (1) a literal application or enforcement of this regulation would result in substantial practical difficulty or unnecessary hardship and when the variance would not be contrary to the public interest. (2) A variance must be granted for a nonconforming use when there is no immediate hazard to safe flying operations or to persons and property in the vicinity of the airport and when the noise or vibrations from normal and anticipated normal airport operations would not be likely to cause damage to structures. (3) Conditions may be imposed for granting the variance, including, but not limited to, a requirement the owner of a structure or pay for the installation, operation and

maintenance of lights and markers necessary to warn pilots of the presence of a hazard or obstruction with the Gallatin County Airport Appeals Board installing the lights or markers.

#### **4.4 Appeals.**

An appeal from a decision, determination or order of the Airport Agent must be submitted, in writing, to the Airport Appeals Board, within SIXTY (60) DAYS of the written decision, determination or order of the Airport Agent. Appeals may be filed by the applicant, any aggrieved person, adjacent landowner, or the governing body or its boards, departments or agents and must state with specificity the basis of the appeal and provide a complete record, including documents, photographs, maps, surveys, and transcript of any public hearings. Untimely appeals shall not be considered and shall constitute a full waiver of any right to contest the issues therein, or issues that may have been appealable.

#### **4.5 Public Hearing Special Exceptions, Variances and Appeals.**

##### **4.5.1 Notice and Posting.**

The person requesting a special exception, variance or appeal must notify all adjacent landowners by FIRST CLASS US MAIL at least TEN (10) DAYS before the Airport Appeals Board public hearing and the notice must include the date, time and place of the public hearing with a copy of the application and any sketches, maps, surveys or photographs of other documents that might be submitted at the public hearing. At least TEN (10) DAYS before the scheduled public hearing the subject property must be posted with a Notice and in manner approved by the Airport Agent. Mailing to the last known addresses as shown in the public records of Gallatin County shall be adequate notice. An affidavit by the applicant or applicant's agent attesting to proof of mailing and posting shall be provided to the Airport Appeals Board prior to the commencement of the scheduled public meeting.

##### **4.5.2 Public Meetings Law.**

The Airport Appeals Board must notice and conduct the public hearing and give notice in accordance with public meetings law, MCA 7-1-2121, and shall allow reasonable time for the applicant, opponents and any other public comment, including FAA comments, recommendations or reports if applicable. The Airport Agent may make recommendations in a written staff report to the Airport Appeals Board. The Airport Appeals Board must make written findings of fact and determine if based on the evidence presented the applicant has met the criteria for the granting of a variance, special exception or appeal. If not the Airport Appeals Board must make written findings of fact and deny the requested relief.

##### **4.5.3 Airport Appeals Board Decision.**

In reviewing, granting or deciding any special exception, variance or appeal the Airport Appeals Board may in conformity with the provisions of this regulation and governing statutes, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination as ought to be made and to that end shall have all the powers of the officer from whom the appeal is taken.

##### **4.5.4 Findings of Fact Required.**

In granting or denying any special exceptions, variances, and appeals the Airport Appeals Board shall provide findings of fact, giving consideration to the conditions or criteria required by this regulation, the owner's rights, the number and height of the proposed structures, use and occupancy, and affects or impacts, if any on, public health, safety and general welfare and the

general intent and purpose of this regulation. The Airport Agent may provide recommendations and a staff report to assist the Airport Appeals Board regarding any special exceptions.

#### **4.6 Enforcement.**

The Airport Agent is the agent(s) or person(s) appointed or designated by the Gallatin County Commission and City of Three Forks to administer, enforce, interpret, supervise, and administer these regulations and permits. Written notice of a violation must be given by the Airport Agent to the violator, specifying how these regulations have been violated, how the violation can be remedied and setting a reasonable deadline for the correction of the violation, prior to the imposition of a penalty. The penalty provisions of these regulations must also be included in the notice.

#### **4.7 Penalty.**

As required by MCA 67-7-304, a person who violates this regulation, or condition of any permit or variance, or does not correct a violation, after notification that person is subject to a civil penalty and a criminal penalty.

##### **4.7.1 Civil Penalty.**

The civil penalty is a fine of \$100 for each day that the violation is not remedied after the governing body has given notification of the violation and held a hearing on the violation. The Airport Agent may make recommendations to the governing body regarding the civil penalty.

##### **4.7.2 Criminal Penalty.**

In addition to or separate from the civil penalty, the County Attorney or City of Three Forks Attorney may file misdemeanor criminal charges for a violation of these regulations. Pursuant to Section 45-2-104, MCA, a person is absolutely liable for a violation of these regulations. Upon conviction a fine of \$500 must be imposed.

#### **4.8 Injunction.**

Gallatin County or City of Three Forks may institute in any court of competent jurisdiction an action to prevent, restrain, correct, or abate any violation of MCA § 67-7-101 et seq, or this regulation.

## **Section 5. Marking Structures.**

### **5.1 Marking Nonconforming Structures.**

With written notification, a property owner shall allow the governing body to install, operate and maintain lights and markers necessary to warn pilots of a nonconforming use at the governing body's expense.

### **5.2 Marking Structures Conditional Permits.**

If required by a special exception, variance, or decision or determination following an appeal, the owner of a structure shall allow the governing body to install, operate and maintain markers or lights to warn pilots of the presence of a hazard or obstruction at the owner's expense.

## Section 6. Change of Use Table.

### 6.1 Land Use Classification For Determining Change of Use.

The following uses and descriptions shall be used to determine if a change of use has occurred for the purposes of requiring permit review. A change of use from one category to another shall require permit review:

Use	Description
Airport	Airport runway, tarmac, hangars, and other associated structures and uses.
Agricultural	Cultivation of the soil, farming, ranching, raising livestock or dry grain crops and all incidental uses <b>including irrigation, crop rotation, harvesting, livestock processing, storage, maintenance or repair of related equipment and other incidental activities.</b>
Business	Retail stores and services, restaurants, convenience stores, casinos, hotels, motels, bed and breakfast, filling stations, office buildings, and other general business uses, auto repair, and other general non-industrial / commercial businesses.
Cemeteries	Burial grounds, cemeteries, funeral homes and related uses.
Communications	Broadcasting, public communications or communication utilities, TV, radio, microwave and cellular towers and related uses, facilities or structures.
Education	Nursery and pre-nursery, elementary, grade, junior high and high schools day care centers [but not home day care or home based nursery schools], adult schools, district offices, universities, colleges, and junior colleges, including related facilities, playing fields, stadiums and grounds.
Government Special	Defense installations, military training facilities, military ranges, and related facilities, structures and uses.
Industrial / Commercial	Manufacturing, warehousing, refining, smelting, fabrication, assembling, heavy equipment operations, auto wrecking / junkyards, and other commercial uses involving production, storage, processing or refinement of goods and related facilities, structures or uses.
Parks, Open Space & Recreation	Community parks, playgrounds, golf courses, riding academies or equestrian centers, recreation complexes, open space, reserves, nature conservatories, and other recreational lands whether privately or publicly owned.
Public Facilities	Local, state or federal government buildings or offices, civic centers, libraries, community buildings, offices, police, fire, emergency and related facilities, structures and uses.
Religious	Churches and other places of worship.
Residential MF	Multi-family homes, dwellings, apartment buildings, townhouses, mobile home or manufactured home parks and related accessory buildings, structures and uses.
Residential SF	Single-family homes, dwellings and related accessory buildings, structures and uses.
Utilities	Sewage, waste water and water treatment facilities, and municipal water storage or water towers including related facilities and uses.

Vacant	Undeveloped properties not being used for any of the described uses.
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## **Section 7. Adoption.**

### **7.1 Final Print.**

This regulation may be copied, distributed, posted in electronic form, printed or published and changes in font, text size, bold, underlining, formatting or color shall not effect or change the intent or meaning. Any emphasis added is simply for illustrative purposes.

### **7.2 Conflicts With Zoning.**

In the event of conflict between this regulation and any zoning ordinance or resolution the more stringent limitation or requirement prevails.

### **7.3 Supersedes.**

This regulation supersedes all previous versions of this regulation.

### **7.4 Amendments.**

This regulation and the boundaries of the airport affected area map may be amended or revised whenever the public health, safety and general welfare requires such amendment or as provided in the MCA 67-7-201. Amendments shall made by the governing body following a minimum of at least one public hearing as required by MCA 67-7-201(5) with notice published as provided by MCA 7-1-2121.

### **7.5 Severability.**

If a court of competent jurisdiction holds any word, phrase, clause, sentence, paragraph, section, or other part of these regulations invalid, that judgment affects only the part held invalid.

### **7.6 Effective Date.**

The effective date that this regulation shall be 30-days after the regulation has been adopted by resolutions of the Joint Airport Board, the City Council of the City of Three Forks, and the County Commissioners and the regulation has been duly recorded with the Clerk of the City of Three Forks and the Clerk and Recorder's Office of Gallatin County.

#### **7.6.1 PFJAAARB Approval.**

The Pogreba Field Joint Airport Affected Area Regulation Board adopted this Pogreba Field Airport Affected Area Regulation on \_\_\_\_\_.

#### **7.6.2 City Council Approval.**

The City Council of the City of Three Forks adopted this Pogreba Field Airport Affected Area Regulation on \_\_\_\_\_.

#### **7.6.3 Gallatin County Approval.**

The Board of County Commissioners of Gallatin County adopted this Pogreba Field Airport Affected Area Regulation on \_\_\_\_\_.

**GALLATIN COUNTY COMMISSIONERS**

**THREE FORKS CITY COUNCIL**



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Joe P. Skinner, Chair

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Steve Hamilton

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R. Stephen White

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Matt Jones

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William A. Murdock

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Victoria Kosevich

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Ed Tharp

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Crystal Turner

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Dennis Nelson

